IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

WRIT **PETITION NO.2623 OF 2006**

Nirmal Nagar Bhadekaru

Sangh (Regd). & Ors. ..Petitioners

Vs.

The State of Maharashtra & Ors..Respondents

Mr. Madhav J.Jamdar, for the Petitioners.

Mr.Niranjan Pandit, AGP for Respondent Nos. 1 to 3.

Mr.G.D.Utangale, for Respondent No.4.

Ms. Trupti Puranik, for Respondent No.5.

Mr. Girish Godbole, for Respondent Nos. 6 and 7

CORAM: **F.I. REBELLO &**

ANOOP V. MOHTA**, JJ.**

DATE: 10TH OCTOBER,2006

P.C.

. It is unfortunate that the petitioners are trying to misread the order of this Court dated 12th January, 2006 in Writ Petition Lodging No.2554 of 2005.

2. The petitioners had earlier approached this Court by way of Writ Petition NO.1816 of 2001. That petition came to be disposed of by order dated 3rd October, 2003 after hearing all the parties. It was the case of the petitioners before this Court that the construction being put up was contrary to the

planning laws. A learned Bench of this Court after considering all the aspects of the matter on 3rd October, 2003 noted that there is a report on record of a qualified Architect duly appointed by this Court that no injury of any kind like entry of road, access, etc., is caused to the petitioner or its alleged members, none of whom has come before this Court. The petition was dismissed imposing costs quantified at Rs.7,500/-. The petitioners preferred a Special Leave Petition which was withdrawn by the learned Counsel with a statement that they want to avail other alternative remedies. No liberty of whatsoever nature was granted.

3. Thereafter the petitioners herein preferred one more petition being Writ Petition Lodging No.2554 of 2005 which has been disposed of on 12th January, 2006. By that order the petitioners were allowed to make representation. In our opinion that order of this Court will have to be properly read, considering the earlier disposal of Writ Petition No.1816 of 2001. All issues which were in issue in Writ Petition No.1816 of 2001 would stand concluded and could not be reagitated and even if the any other issue then was available, the principles of constructive res judicata or principles analogous would be attracted. The judgment of this Court in respect of Writ Petition Lodging No.2554 of 2005in the matter of representation, therefore, can only be in respect of acause of action which have arisen

subsequent to the order of this Court dated 3rd October, 2003. The petitioners cannot reagitate the same issues which were in issue before this Court earlier. Even then on a representation being made the Municipal Authorities have clearly set out that the construction is not coming on the D.P. Road. The other issues which are sought to be agitated are issues which already were in issue in Writ Petition No.1816 of 2001. In our opinion these issues cannot be reagitated. Pursuant to the direction of this Court the MHADA has considered the representation and disposed of the same by a speaking order.

. This petition is nothing but a gross abuse of the process of this Court. In that light of the matter, petition dismissed with costs quantified at Rs.25,000/- to be paid in favour of respondent No.7 by the petitioners.

(F.I. REBELLO, J)

(ANOOP V. MOHTA,J).